Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO M-01–102 OF 2004
JAMES FOONG, SURIYADI AND AHMAD MAAROP JJCA
7 APRIL 2008

Labour Law — Employment — Dismissal — Appellant an Assistant Superintendent of Police — Whether dismissal was fair and valid — Whether rules of natural justice observed — Whether appellant given reasonable opportunity to be heard — Whether first respondent's exercise of discretion to refuse oral hearing was contrary to art 135(2) of the Federal Constitution — Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980

The appellant, an Assistant Superintendent of Police in the police force was informed by his employer (the first respondent) of its intention to dismiss him from the police force. The appellant was given a show cause letter wherein he was requested to show cause why he should not be dismissed in relation to five charges that were brought against him. The five charges were in relation to the appellant's misconduct in performing his duties as an investigating officer in his branch. These charges alleged that he had dealings with certain operators of illegal 4-digit activities, that he had accepted bribes from them and behaved in a manner likely to cause a reasonable suspicion by allowing his private interests to come in conflict with his public duty. The appellant was thereafter given the opportunity to make written representations to the first respondent. However, at the inquiry the first respondent concluded that the appellant's representation had not shown sufficient cause and as a result the appellant was dismissed from the police force. The appellant thereafter filed a writ of summons in the High Court for a declaration that his dismissal was unlawful, unconstitutional, void and of no effect. In the High Court, the appellant contended that the charges against him were vague and imprecise and as such impossible to answer and that the proceedings which resulted in his dismissal were not conducted in accordance with the rules of natural justice as enshrined under art 135(2) of the Federal Constitution ('Constitution'). In this respect the appellant submitted that he was deprived of the right to be heard and that although he had requested for an oral hearing, no response was forthcoming. The respondents on the other hand stated that the charges must have been clear, as the appellant had

supplied a defence to the charges without applying for any further documents from them. The respondents also maintained that they had complied with all the relevant provisions of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 and had afforded the appellant the opportunity to make representation which amounted to the right to be heard under art 135(2) of the Constitution. Based on the evidence the High Court concluded that the appellant's dismissal was fair and valid. Therefore in this appeal, which is on similar grounds as the trial at the High Court, the appellant has alleged, inter alia, that the judge had erred in law and in fact when he concluded that the charges were clear, failed to appreciate the procedural unfairness against the appellant, failed to take into account the statutory declarations of the appellant's witnesses, wrongly applied art 135(2), and refused to adjourn the hearing even though the appellant's counsel was engaged in another hearing in the Federal Court.

Held, dismissing the appeal with costs:

(1) The Police Commission, which decided on the dismissal of the appellant, was not required to afford to the appellant, who was a public officer, an oral hearing in relation to art 135(2). This was in line with the decision of the Federal Court in *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417. In the light of the above case, it was clear that an oral hearing was not an absolute right, which must be granted to the appellant. Also the Police Commission has full discretion under general order 26(6) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 to allow or disallow an oral hearing. In the instant case, they have exercised their discretion to refuse it and this refusal was not contrary to law (see paras 11–12 & 15).

(2) It was observed that the letter informing the appellant of the impending disciplinary action was in clear language. The question of his dismissal was also fully spelt out. By his reply the appellant had availed himself of the opportunity to be heard on the contemplated dismissal by the Police Commission. In brief at the earliest stages he was afforded the opportunity to make representations to the Police Commission. The procedural steps to be followed by way of disciplinary proceedings had all been met, thereby leading to the conclusion that the appellant had been given a reasonable opportunity of being heard and the concept of procedural fairness including the opportunity of being heard to be afforded to an officer, contained in art 135(2) of the Constitution had been satisfied (see paras 16–17).

(3) There was no merit in the appellant's submission that the charges levied against the appellant were imprecise or vague because, as the High

Court had found, the appellant would not have been able to forward a comprehensive 40 paged representation otherwise (see para 18).

(4) There was also no merit in the appellant's claim that the trial judge had given no consideration to the three statutory declarations of the appellant's witnesses. In the first place these documents could not be admitted in evidence without an application to adduce fresh evidence being made, which was not done. In any case a perusal of the statutory declaration showed that it failed to pass the basic test of it qualifying as a statutory declaration. In fact it was obvious that the inclusion of these documents was only an attempt by the appellant to extricate himself even up to the last second (see para 19).

(5) The appellant's complaint that the trial judge had refused to postpone the hearing of this appeal due to the engagement of the appellant's counsel in another case was untenable. Practice Direction No 5 of 1989 explicitly states that no court should postpone a case by reason of counsel being engaged in another case held in a more superior court (see para 20).

[Bahasa Malaysia summary

Perayu, Penolong Penguasa Polis dalam pasukan polis telah diberitahu oleh majikannya ('responden pertama') tentang niatnya untuk memecat perayu daripada pasukan polis. Perayu telah diberikan surat tunjuk sebab yang mana perayu diminta menunjukkan sebab kenapa dia tidak patut dipecat berkaitan lima pertuduhan yang dibuat terhadapnya. Lima pertuduhan tersebut adalah berkaitan salah laku perayu dalam melaksanakan tugasannya sebagai seorang pegawai penyiasat di cawangannya. Pertuduhan-pertuduhan tersebut menyatakan bahawa dia mempunyai urusan dengan orang tertentu yang menjalankan kegiatan haram 4-digit, bahawa dia telah menerima rasuah daripada mereka dan berkelakuan dengan sikap yang mungkin menyebabkan rasa syak yang munasabah dengan membenarkan kepentingan peribadinya bercanggah dengan tugas awamnya. Perayu seterusnya telah diberikan peluang untuk membuat representasi bertulis kepada responden pertama. Walau bagaimanapun, semasa siasatan responden pertama memutuskan bahawa representasi perayu tidak menunjukkan sebab yang mencukupi dan akibatnya perayu dipecat daripada pasukan polis. Perayu seterusnya telah memfailkan writ saman di Mahkamah Tinggi untuk deklarasi bahawa pemecatannya adalah menyalahi undang-undang, tidak berperlembagaan, tidak sah dan tidak berkuat kuasa. Di Mahkamah Tinggi perayu menegaskan bahawa pertuduhan-pertuduhan terhadapnya adalah tidak jelas dan tidak tepat dan oleh itu mustahil untuk dijawab dan bahawa prosiding yang

menyebabkan pemecatannya tidak dilaksanakan menurut rukun keadilan asasi sepertimana yang termaktub di bawah perkara 135(2) Perlembagaan Persekutuan ('Perlembagaan'). Berhubung ini perayu menghujahkan bahawa dia terkilan akan haknya untuk didengar dan bahawa meskipun dia telah memohon perbicaraan lisan, tidak ada maklum balas diterima. Responden sebaliknya menyatakan bahawa pertuduhan-pertuduhan tersebut seharusnya jelas, kerana perayu telah mengemukakan pembelaan terhadap pertuduhan-pertuduhan tersebut tanpa memohon apa-apa dokumen lanjut daripada mereka. Responden-responden juga menegaskan bahawa mereka telah mematuhi kesemua peruntukan berkaitan Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 dan telah memberikan perayu peluang untuk membuat representasi yang membentuk hak untuk didengar di bawah perkara 135(2) Perlembagaan. Berdasarkan keterangan tersebut Mahkamah Tinggi telah memutuskan bahawa pemecatan perayu adalah adil dan sah. Oleh itu dalam rayuan ini, yang berdasarkan alasan sama seperti perbicaraan di Mahkamah Tinggi, perayu menyatakan, antara lain, bahawa hakim terkhilaf dari segi undang-undang dan pada hakikatnya apabila dia memutuskan bahawa pertuduhan-pertuduhan tersebut adalah jelas, telah gagal untuk menyedari ketidakadilan prosedur terhadap perayu, gagal untuk mengambil kira deklarasi statutori saksi-saksi perayu, salah menggunakan perkara 135(2), dan enggan menangguhkan perbicaraan meskipun peguam perayu terlibat dalam perbicaraan lain di Mahkamah Persekutuan.

Diputuskan, menolak rayuan dengan kos:

(1) Pesuruhjaya Polis, yang memutuskan pemecatan perayu, tidak perlu memberikan kepada perayu, yang merupakan pegawai awam, peluang untuk perbicaraan lisan berkaitan perkara 135(2). Ini adalah selaras dengan keputusan Mahkamah Persekutuan dalam *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417. Berdasarkan kes di atas, adalah jelas bahawa perbicaraan lisan bukan hak mutlak, yang perlu diberikan kepada perayu. Pesuruhjaya Polis juga mempunyai budi bicara penuh di bawah peraturan am 26(6) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 untuk membenarkan atau tidak membenarkan perbicaraan lisan. Dalam kes ini, mereka telah menggunakan budi bicara mereka untuk menolaknya dan keengganan ini tidak bertentangan dengan undang-undang (lihat perenggan 11–12 & 15).

(2) Adalah diteliti bahawa surat yang memaklumkan perayu tentang tindakan tatatertib yang akan berlaku adalah dalam bahasa yang jelas.

Persoalan tentang pemecatannya juga dinyatakan dengan jelas. Melalui jawapannya perayu kehilangan peluang untuk didengar bagi pemecatan yang diniatkan oleh Pesuruhjaya Polis. Secara ringkasnya di peringkat awal dia telah diberikan peluang untuk membuat representasi kepada Pesuruhjaya Polis. Langkah-langkah prosedur yang patut diikut melalui prosiding tatatertib kesemuanya telah dipenuhi, seterusnya membawa kepada kesimpulan bahawa perayu telah diberikan peluang sewajarnya untuk didengar dan konsep keadilan prosedur termasuklah peluang untuk didengar perlu diberikan kepada pegawai, yang terkandung dalam perkara 135(2) Perlembagaan telah dipenuhi (lihat perenggan 16–17).

(3) Tiada merit dalam penghujahan perayu bahawa pertuduhan-pertuduhan yang dikenakan terhadap perayu adalah tidak tepat atau tidak jelas kerana, jika tidak, sepertimana yang didapati oleh Mahkamah Tinggi, perayu tidak mungkin dapat mengemukakan representasi yang komprehensif sebanyak 40 muka surat (lihat perenggan 18).

(4) Tidak ada merit dalam tuntutan perayu bahawa hakim perbicaraan tidak mempertimbangkan tiga deklarasi statutori saksi-saksi perayu. Pada peringkat awal dokumen-dokumen tersebut tidak boleh dikemukakan sebagai keterangan tanpa permohonan untuk mengemukakan keterangan baru dibuat, yang tidak dilakukan. Dalam apa keadaan penelitian deklarasi statutori menunjukkan bahawa ia gagal untuk melepasi ujian asas untuk melayakkannya menjadi deklarasi statutori. Bahkan ia adalah nyata bahawa pemasukan dokumen-dokumen tersebut hanya percubaan oleh perayu untuk melepaskan dirinya walau sehingga ke saat akhir (lihat perenggan 19).

(5) Aduan perayu bahawa hakim perbicaraan enggan menangguhkan perbicaraan rayuan ini kerana peguam perayu terlibat dalam kes lain, tidak dapat dipertahankan. Arahan Amalan 5 Tahun 1989 dengan jelas menyatakan bahawa tiada mahkamah yang patut menangguhkan kes atas alasan bahawa peguam terlibat dalam kes lain di mahkamah yang lebih tinggi (lihat perenggan 20).]

Notes

For cases on dismissal from employment, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 920–953.

Cases referred to

Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia [2002] 2 MLJ 131 (distd)

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169 (refd)

Lee Ah Tee v Ong Tiow Pheng & Ors [1984] 1 MLJ 107 (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417 (folld)
M Sentivelu a/l R Marimuthu v Public Service Commission Malaysia & Anor [2005] 5 MLJ 393 (distd)
Mat Ghaffar bin Baba v Ketua Polis Negeri & Anor [2008] 2 MLJ 1 (distd)

Legislation referred to

Federal Constitution art 135(2)
Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 general orders 4, 4(2)(d), 26, 26(6), 36, 36(i)

Appeal from: Civil Suit No 21–4 of 1997 (High Court, Malacca)

G Subramaniam Nair (Marisa Regina with him) (Aris Rizal Christopher Fernando & Co) for the appellant.
Narkunavathy Sundareson (Stephen Chu Chee Keong with her) (Attorney General's Chambers) for the respondent.

Suriyadi JCA (delivering judgment of the court):

[1] This panel had heard the appeal of the appellant on 1 April 2008 and at the end of the hearing had dismissed it with costs. To appreciate our reasons I herewith reproduce the antecedent and facts of the appeal. I will start off with the filing of a writ of summons by the plaintiff (hereinafter referred to as the appellant) at the High Court against the defendants ('the respondent') for a declaration that the appellant's dismissal from the police force was unlawful, unconstitutional, void and of no effect and that the appellant was still the employee of the first respondent and entitled to all the salaries, emoluments and benefits due.

[2] The dismissal's history came about in the following manner. The facts were that the appellant was an Assistant Superintendant of Police in the police force and a former employee of the first respondent. Vide a show cause letter dated 30 June 1993, the first respondent had informed the appellant of its intention to dismiss him from the police force and had requested him to show cause why he should not be dismissed, pursuant to general order 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 in relation to five charges brought against him.

[3] The five charges were in relation to the appellant's misconduct in performing his duties as an investigating officer in Branch D7 in the Negeri

Sembilan Police Contingent Headquarters. For the period from January 1990 to September 1990 he was alleged to be:

(1) dishonest, when he received monthly bribes from an operator of illegal 4-digit activities from one Chong Lee Lin @ Lin Chai through one Ee Ten (the first charge);

(2) irresponsible, when he had failed to take police action against five operators of illegal 4-digit activities in connection with the illegal 4-digit activities carried out by them around the town of Seremban (the second charge);

(3) irresponsible, when he failed to report to his superior in connection with the illegal 4-digit activities carried out by the five operators and their syndicate around the town of Seremban (the third charge);

(4) he had conducted himself in a manner likely to cause a reasonable suspicion by allowing his private interests to come in conflict with his public duty for the period from March 1990 and September 1990 when he had established a close relationship with an operator of illegal 4-digit activities by the name of Chong Lee Lin @ Lin (the fourth charge); and

(5) he had conducted himself in a manner likely to cause a reasonable suspicion by allowing his private interests to come in conflict with his public duty for the period from May 1990 and September 1990 when he had established a close relationship with an operator of illegal 4-digit activities by the name of Khu Tee Sing @ Ah Seng (the fifth charge).

[4] The detailed charges read as follows:

(1) Bahawa anda, seorang Pegawai Awam iaitu Penolong Penguasa Polis, di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati tidak jujur iaitu telah menerima wang sogokan bulanan sebanyak RM1,000 sebulan dari seorang penganjur kegiatan empat ekor haram bernama Chong Lee Lin @ Lin Chai (KP: 0216980) melalui Ee Ten (KP: 8204774) dalam tempoh mulai Januari 1990 hingga September 1990 di No 30, Jalan Tunku Munawir, Seremban, Negeri Sembilan untuk memberi perlindungan ke atas kegiatan empat ekor haram yang dijalankan oleh sindiketnya di sekitar Bandar Seremban, Negeri Sembilan dalam tempoh yang berkenaan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D), 1980.

(2) Bahawa kamu, seorang pegawai awam iaitu Penolong Penguasa Polis di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati tidak

bertanggungjawab, iaitu kamu telah tidak mengambil tindakan polis ke atas lima orang penganjur kegiatan empat ekor haram bernama Chong Lee Lin @ Lin Chai (KP:0216980), Khu Tee Sing @ Ah Seng (KP: 7695099), Lue Chan Kong @ Siau Lee (KP: 2005446), Chong Cham (KP: 2473143) dan Wee Loke Choon @ Ah Choon (KP: 5146858) serta sindiket mereka dalam tempoh mulai Januari 1990 hingga September 1990 bersabit kegiatan empat ekor haram yang dijalankan oleh mereka di sekitar Bandar Seremban, Negeri Sembilan dalam tempoh berkenaan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah-Perintah Am, Pegawai Awam (Kelakuan dan Tatetertib) (Bab 'D'), 1980.

(3) Bahawa anda, seorang Pegawai Awam iaitu Penolong Penguasa Polis di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan didapati tidak bertanggungjawab, iaitu kamu telah tidak melaporkan kepada pegawai atasan mengenai kegiatan empat ekor haram yang dijalankan oleh Chong Lee Lin @ Lin Chai (KP: 0216980), Khu Tee Sing @ Ah Seng (KP: 7695099), Lue Chan Kong @ Siau Lee (KP: 2005446), Chong Cham (KP: 2473143) dan Wee Loke Choon (KP: 5146858) serta sindiket mereka di sekitar Bandar Seremban, Negeri Sembilan, dalam tempoh mulai Januari 1990 hingga September 1990 dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah-Perintah Am, Pegawai Awam (Kelakuan dan Tatatertib) (Bab D), 1980.

(4) Bahawa kamu, seorang pegawai awam iaitu Penolong Penguasa Polis, di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati berkelakuan yang dianggap sebagai membiarkan kepentingan persendirian kamu bercanggah dengan kewajipan-kewajipan awam kamu, iaitu kamu telah menjalin perhubungan yang erat dengan seorang penganjur kegiatan empat ekor haram bernama Chong Lee Lin @ Lin Chai (KP: 0216980) di antara Mac 1990 hingga September 1990 dengan mengetahui ianya adalah penganjur kegiatan empat ekor haram di sekitar Bandar Seremban, Negeri Sembilan, sehingga menjejaskan kegunaan kamu sebagai PP Cawangan D7, IPK Negeri Sembilan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(c)(i), Perintah Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980.

(5) Bahawa kamu, seorang pegawai awam iaitu Penolong Penguasa Polis, di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati berkelakuan yang dianggap sebagai membiarkan kepentingan persendirian kamu

bercanggah dengan kewajipan-kewajipan awam kamu, iaitu kamu telah menjalin perhubungan yang erat dengan seorang penganjur kegiatan empat ekor haram bernama Khu Tee Sing @ Ah Seng (KP:7695099), di antara Mei 1990 hingga September 1990 dengan mengetahui ianya adalah penganjur kegiatan empat ekor haram di sekitar Bandar Seremban, Negeri Sembilan, sehingga menjejaskan kegunaan kamu sebagai PP Cawangan D7, IPK Negeri Sembilan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(c)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D), 1980.

[5] The appellant was given the opportunity to make written representation to the first respondent through the Inspector General of Police not later than 21 days from the date of receipt of the show cause letter. In response thereto, the appellant had vide letter dated 29 July 1993 sent his representation to the first respondent relying on the materials he had in his possession. At the inquiry the first respondent concluded that the appellant's representation had not shown sufficient cause. As a result vide letter dated 15 August 1994, the appellant was dismissed from the police force.

[6] At the High Court, where the appellant had applied for a declaration against the respondents, the appellant had contended that the charges were vague and imprecise and that it was almost impossible for anyone to answer meaningfully. The proceedings which resulted in his dismissal were alleged to have been conducted not in accordance with natural justice as enshrined under art 135(2) of the Constitution. No information, documents or any evidence in the possession of the police force Commission was ever given to the appellant. The appellant had alleged that he was deprived of his rights to be heard. The Police Commission should have allowed him an oral hearing but no response was forthcoming despite his request for it.

[7] The respondents on the other hand had stated that the charges were clear. The appellant had understood the charges as he had supplied a defence and had also pleaded in mitigation in his representation without the need to apply for any document from the first respondent. The respondents had also stated that it had complied with the relevant provisions of the general orders. They had asserted that the appellant had been served with the show cause letter which had clearly set out the five charges. He was given the opportunity to make representation and thus had been afforded the right to be heard under art 135(2) of the Constitution.

[8] A scrutiny of the learned High Court judge's decision by us showed that he had made findings of facts and had opined that the charges were clear, precise and comprehensive. The High Court had concluded that they

contained the particulars of all the allegations in the disciplinary offences preferred against the appellant. The appellant had understood the charges against him and had made no attempt or taken any other steps such as applying for further and better particulars or documents. From the notes of proceedings it showed that the agreed issue for determination was whether the appellant's dismissal from the police force was fair and valid, having regard to the rules of natural justice, the Public Officers (Conduct & Discipline) (Chapter D) General Orders 1980 and art 135(2) of the Federal Constitution.

[9] Likewise before us the main grounds of appeal were not dissimilar to the grounds at the High Court, in that the appellant had alleged, inter alia, that the learned judge had erred in law and in fact when he concluded that the charges were clear, precise and comprehensive on the following basis. Alleged factual errors made by the learned judge included his views that if the charges were not clear, the appellant would not be able to make his representation. Further the finding that the appellant thanked the first respondent for affording him opportunity to reply to the charges. Other errors were that the learned judge:

(1) had erred in law and in fact when he refused to adjourn the hearing of this case or to stand-down the matter on 21 May 2004 when his counsel was engaged in a part-heard criminal appeal at the Federal Court in case No 05-6 of 2003;

(2) had failed to take into account the statutory declarations of the appellant's witnesses denying the appellant's involvement in the matters as alleged in the charges leveled against him;

(3) had erred when he decided that there was no procedural unfairness towards the appellant despite there being failure on the part of respondents to supply information and documents to the appellant;

(4) had erred in law and in fact when he wrongly applied art 135(2) of the Federal Constitution; and

(5) the learned judge had erred in law and in fact when he failed to consider the duplicity of charges leveled against the appellant.

[10] When I dismissed this appeal I had held the following views.

[11] The Police Commission, which decided on the dismissal of the appellant was not required to afford to the appellant who was a public officer, an oral hearing in relation to art 135(2) of the Federal Constitution which reads:

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

[12] My view was in line with the Federal Court authority of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417 in particular at p 444. The respondent in that case was employed as a hospital attendant at the Penang General Hospital. The first appellant had issued him a show cause letter dated 31 January 1991 to institute disciplinary proceedings for dismissal or reduction in rank on the ground that the respondent's urine sample was positive of morphine in breach of para (2)(d) of the general order 4 of the Public Officers (Conduct and Discipline)(Chapter D) General Orders 1980 ('the General Orders'). In his letter dated 7 February 1991, the respondent denied that he was a drug addict. On 20 March 1991, the first appellant forwarded to the respondent a letter informing him that he had been dismissed under para (i) of general order 36 of the General Orders. The respondent was also informed that he had the right to appeal to the Disciplinary Board. The respondent by a letter dated 26 March 1991 repeated what he had said in his letter dated 7 February 1991. His appeal was dismissed by a letter dated 4 July 1991. The respondent instituted proceedings against the appellants for wrongful dismissal and the High Court had decided in his favour. The appellant's appeal to the Court of Appeal was dismissed on grounds that: (a) the respondent had been deprived of his right to make representations on punishment and (b) there was failure of procedural fairness as the respondent was deprived of an oral hearing. Leave to the Federal Court was granted for two questions to be referred one of which is: 'does art 135(2) of the Constitution require the relevant disciplinary authority to afford the public officer an oral hearing.'

[13] After a thorough scrutiny of the law, the Federal Court in no uncertain terms answered the above question in the negative.

[14] It is quite unfortunate that subsequent cases considered by courts subordinate to the Federal Court barely touched this case. Regretfully too, the Court of Appeal authorities cited to us in particular *Mat Ghaffar bin Baba v Ketua Polis Negeri & Anor* [2008] 2 MLJ 1, *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia* [2002] 2 MLJ 131 and *M Sentivelu a/l R Marimuthu v Public Service Commission Malaysia & Anor* [2005] 5 MLJ 393 are distinguishable and inapplicable, in light of the above Federal Court decision in *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417.

[15] In the light of the above Federal Court case, it is succinctly clear that an oral hearing is not an absolute right, which must be granted to the appellant. Also the Police Commission has full discretion under general order 26(6) to allow or disallow an oral hearing. In this instant case, we are of the view they had exercised their discretion to refuse it (this impugned provision reads: (6) *Pegawai itu hendaklah diberitahu bahawa, pada hari yang ditetapkan, soal buang kerja atau turun pangkat itu akan dibawa ke hadapan Jawatankuasa dan bahawa ia akan dibenarkan dan jika Jawatankuasa memutuskan sedemikian, ia adalah dikehendaki hadir di hadapan Jawatankuasa itu dan membebaskan dirinya*). This refusal to allow the appellant an oral hearing is therefore was not contrary to the law.

[16] What was important at the end of the day was the requirement that the appellant be given reasonable opportunity of being heard (*Surinder Singh Kanda v The Government of the Federation of Malaysia* [1962] MLJ 169). In the latter case the report of the board of inquiry, which contained a severe condemnation of the plaintiff, was sent to the adjudicating officer before the inquiry. The question there for determination was, whether the hearing by the adjudicating officers was vitiated, by reason of him being furnished with the report, without the plaintiff being given an opportunity of correcting or contradicting it. The outcome of this case was irrelevant to us as the salient facts differed with the current appeal.

[17] The pertinent question in this instant appeal was whether he was given reasonable opportunity to be heard? It was observed that the letter informing the appellant of the impending disciplinary action was in clear language. The question of his dismissal from the police force was also fully spelt out. By 29 July 1993 vide his reply he had availed himself of the opportunity to be heard on the contemplated dismissal by the Police Commission. In brief at the earliest stages he already was afforded the opportunity to make representation to the Police Commission. After due consideration we were satisfied that the appellant had been given a reasonable opportunity of being heard pursuant to the general order 26, which consists 11 paragraphs prescribing the procedural steps to be followed by way of disciplinary proceedings. In them are incorporated the concept of procedural fairness, including the opportunity of being heard to be afforded to an officer, demanded and enshrined in art 135(2) as discussed above.

[18] I also found no merit in the appellant's submission that the charges levied on the appellant were imprecise or vague in nature. I agree with the High Court's finding of fact that by the very fact the appellant was able to forward a comprehensive 40 paged representation was testimony of the clarity of the charges.

[19] I also found the submission of the appellant that the learned High Court judge had given no consideration to the appellant's submission in reply at the hearing in the High Court, where three so-called 'statutory declaration' were enclosed to exculpate the appellant, was without merit. It is for the simple reason that such documents should not have been introduced as evidence without an application to adduce fresh evidence being made in the first place. Even a cursory perusal of the so-called statutory declaration, made by one Ghauth bin Abd Ghani, failed to pass the basic test of it qualifying as a statutory declaration; needless to add that the existence of these statutory declarations were never pleaded. It was obvious that the inclusion of these documents at such a late stage was a devious attempt to extricate himself even up to the last second.

[20] In respect of the complaint of the appellant that the learned judge had refused to postpone the hearing of this appeal due to the engagement of his counsel in another case, we found this untenable, as the said counsel should have been present to conduct it. This appeal was fixed much earlier. He should not have elected to be involved in the other case in another court. It must be understood that prima facie the discretion of the judge on whether to permit a postponement of a case is unfettered, though subject to the facts of the case, adequacy of reasons and of course no injustice taking place (*Lee Ah Tee v Ong Tiow Pheng & Ors* [1984] 1 MLJ 107). In relation to this case, Practice Direction No 5 of 1989 explicitly states that no court should postpone a case, by reason of counsel being engaged in another case held in a more superior court. From a scrutiny of the notes of proceedings, it could fairly be concluded that regardless of (a) whether the appellant's counsel was present or not or (b) whether the request for the case to be stood down for the day was rejected, are factors which had become academic. This was so as the mentioning counsel had stated that 'plaintiff would not be calling any witnesses but would put in written submission'. On that premise the case would invariably be ordered by the learned judge to be postponed in order to allow parties to file the necessary written submission. This would unwittingly satisfy the appellant's requirements.

[21] To wind it up, it must clearly be stated that we were not involved in the evaluation of evidence adduced before the Police Commission, but to satisfy ourselves whether procedural fairness had been administered. Based on the above reasons, we were indeed satisfied that the dynamics of procedural fairness had been administered, and hence had unanimously dismissed the appeal with costs. We had ordered the deposit of this appeal paid to the respondents towards the account of taxed costs.

[22] My brother judges YA Dato' James Foong and YA Dato' Ahmad Maarop had read the draft copy of this judgment and agree with the contents therein.

Appeal dismissed with costs.

Reported by K Nesan